Filed 6/14/16 Lewin v. Goldman Sachs CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ROBERT S. LEWIN, Plaintiff and Appellant, v. GOLDMAN SACHS MORTGAGE CO. et al., Defendants and Respondents.	E061201 (Super.Ct.No. RIC1210554) OPINION

APPEAL from the Superior Court of Riverside County. Sharon J. Waters, Judge. Affirmed.

Robert S. Lewin, Plaintiff and Appellant in pro. per.

Houser & Allison, Eric D. Houser, Nicole M. Johnson and Robert W. Norman Jr., for Defendants and Respondents.

Plaintiff Robert S. Lewin's home loan went into default. At that point, defendant Goldman Sachs Mortgage Co. (Goldman) was the beneficiary of the trust deed, and defendant Ocwen Loan Servicing, LLC (Ocwen) was the servicing agent.

Ocwen offered to let Lewin either enter into a settlement, do a short sale, or give a deed in lieu of foreclosure, just as long as he paid $323,000. Lewin claims that, when he talked to an Ocwen representative, she indicated that he could also have a third party buy the note and trust deed for $323,000, and moreover he could have up to 120 days to close the transaction. However, after Lewin lined up the necessary third party and indicated that he was ready to proceed, Ocwen demanded $350,000.

Lewin then filed this action against Goldman and Ocwen, seeking specific performance of an alleged contract to sell the note and trust deed to a third party for $323,000. He also sought to enjoin the then-upcoming trustee's sale; defendants, however, rescinded the notice of trustee's sale before trial.

After a bench trial, the trial court ruled against Lewin and in favor of defendants; it found, among other things, that the alleged contract was never formed. Lewin contends that:

1. The trial court erred by finding that the alleged contract was never formed.

2. The trial court erred by excluding evidence that no assignment of the trust deed to defendants had ever been recorded.

We find no prejudicial error. Hence, we will affirm.

I

FACTUAL BACKGROUND[1]

On June 8, 2005, Lewin took out a loan for $528,100, secured by a trust deed on his home in Temecula. The original beneficiary of the trust deed was World Savings Bank, FSB (World Savings). However, the trust deed was assigned several times. By 2012, Goldman was acting as the beneficiary, Ocwen was acting as Goldman's servicing agent, and Quality Loan Service Corp. (Quality) was acting as trustee. The loan was in default.

On February 8, 2012, Jaida Guillory — an employee of Ocwen — sent Lewin a letter stating, as pertinent here:

"**Avoid foreclosure with a short sale, deed-in-lieu, or settlement**"

"Settlement amount: $323,000.00"

"Contact us by: March 1, 2012"

"Ocwen . . . has a number of options to assist customers who can no longer afford to remain in their home and want to avoid the negative effects of foreclosure."

"• A settlement allows you to payoff [*sic*] your mortgage and settle your mortgage balance for less than the amount owed.

[1] Defendants and the trial court agreed that Lewin could give his direct testimony in the form of a declaration. Defendants objected to portions of the declaration; the trial court sustained some of these objections and overruled others. Defendants then cross-examined Lewin. We disregard any portions of Lewin's declaration to which an objection was sustained.

"• A short sale enables you to sell your property to a third party and settle your mortgage balance for less than the amount owed.

"• A deed-in-lieu allows you to voluntarily transfer the ownership of your property to the noteholder in exchange for a cancellation of the debt."

"Ocwen will agree to a settlement amount of $323,000.00. Once Ocwen receives your payment, we will release the lien associated with this mortgage and report the loan as 'settled' to the credit reporting agencies. To accept this offer, please send the reduced payoff amount and a copy of this letter to: [Ocwen's address].

"**Payment must [b]e in the form of cashier's check, money order, or bank certified funds made payable to Ocwen** . . . ."

On February 8, 2012, Lewin phoned Guillory. He asked if defendants would be willing to settle all claims by "selling their position" for $323,000. He pointed out that there was a junior lien on the property, and therefore any third party who paid off the loan would demand that defendants assign their senior lien to the third party, rather than simply release it.[2] He also asked if it made any difference whether defendants did a "settlement" or a "short sale." According to Lewin, Guillory told him "they didn't care — so long as the end result was that they got $323,000, they were 'done.'" Guillory also told him that he would have at least 60 days to conclude the transaction and, provided

[2] Defendants' theory below was the Lewin planned to get a friendly third party to foreclose and thereby wipe out the junior lien.

reasonable progress was being made, a further extension of 60 days would be routinely granted.

Also on February 28, 2012, Lewin sent Ocwen a letter[3] offering to buy the note and trust deed for $323,000. He requested clarification of Ocwen's February 8 "offer." He also stated, "I will need to obtain financing." He added, "If my understanding is incorrect, PLEASE ADVISE." Ocwen did not respond to this letter.

On or about March 16, 2012, Lewin's acquaintance Barry Hermanson told Lewin that he was willing to buy the note and trust deed for approximately $323,000. Hermanson testified that, from 2012 through the date of trial, he was ready, willing, and able to buy the note and trust deed for $323,000.

On March 19, 2012, Lewin sent Ocwen another letter stating, "I hereby accept your offer to purchase your position for $323,000 in settlement of your claims. [¶] I hereby request a reasonable extension of 60 days to obtain the necessary financing to complete the transaction. My understanding is that such request is routinely granted."[4] Again, Ocwen did not respond to this letter.

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[3] The February 28 letter was admitted into evidence as Exhibit 8, but it has not been included in the appellate record. We therefore accept the trial court's findings of fact about what the letter said.

[4] Lewin offered the March 19 letter into evidence as Exhibit 11. Although the clerk's transcript and the clerk's exhibit sticker indicate that it was not admitted, the reporter's transcript demonstrates that it was. In any event, Lewin testified to its contents.

On March 20, 2012, Quality recorded a notice of default. A trustee's sale was scheduled for July 2012. Starting in May 2012, Ocwen refused to accept anything less than $350,000.

II

PROCEDURAL BACKGROUND

Lewis filed this action against Goldman and Ocwen,[5] asserting causes of action: (1) to invalidate the notice of default, (2) for specific performance of a contract to buy defendants' claims under the note and deed of trust for $323,000, (3) for "predatory lending practices," and (4) for an injunction against a trustee's sale.

After the action was filed, defendants rescinded the notice of default.

The case was tried by the court. After Lewin rested, the trial court granted defendants' motion for judgment. (Code Civ. Proc., § 631.8.) It ruled that the alleged contract was never formed. It also ruled, alternatively, that the alleged contract was unenforceable under the statute of frauds. It further ruled, again alternatively, that Lewin never tendered the alleged consideration. Finally, it rejected Lewin's predatory lending cause of action.[6] Accordingly, it entered judgment against Lewin and in favor of defendants.

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[5] Quality was also named as a defendant, but it filed a declaration of nonmonetary status. This meant that it disclaimed any involvement in the action other than as trustee and it agreed to be bound by any judgment. (Civ. Code, § 2924*l*.)

[6] Lewin does not claim this was error.

III

WE NEED NOT DECIDE WHETHER THE CONTRACT WAS FORMED

Lewin contends that the trial court erred by finding that the alleged contract was never formed. He argues that Ocwen's February 8 letter (as clarified by Guillory) was an offer and that his March 19 letter was an acceptance. He also argues that, even assuming his March 19 letter was a counter-offer, Ocwen accepted it by failing to object.

The trial court, however, rejected Lewin's specific performance claim on three separate and alternative grounds: (1) because the alleged contract was never formed, (2) because the alleged contract was unenforceable under the statute of frauds, and (3) because Lewin never tendered the alleged consideration. Lewin never contends that the second or third ground was erroneous.[7] Defendants even argued, in their respondents' brief, that Lewin's claim is barred by the statute of frauds, yet Lewin did not bother to file a reply brief arguing otherwise.

Accordingly, even assuming Lewin's contention is spot on, he is not entitled to reversal of the judgment; we would still affirm, based on the trial court's unchallenged alternative grounds. We must reject Lewin's contention, without regard to its merits,

[7] Lewin does assert, in the introduction to his brief, that he "was prevented from tendering performance" and "has tendered again in the Complaint." This is not a full-fledged claim of error, however, because he has not raised it under a separate heading or subheading and has not attempted to support it with reasoned argument and citation of authority, as required. (Cal. Rules of Court, rule 8.204(a)(1)(B).)

simply because he has not shown that the claimed error was prejudicial. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.)

IV

THE EXCLUSION OF EVIDENCE THAT DEFENDANTS WERE NOT IN THE CHAIN OF TITLE TO THE TRUST DEED

Lewin contends that the trial court erred by excluding evidence that no assignment of the trust deed to defendants had ever been recorded.

A. *Additional Factual and Procedural Background.*

The general allegations portion of the complaint alleged that " . . . Goldman . . . is the beneficiary of a first Deed of Trust on the Property." However, it also alleged that "Quality has never been properly substituted as trustee."

As mentioned, the fourth cause of action was to enjoin the trustee's sale. It incorporated the general allegations. It then alleged that the trustee's sale "is wrongful in that the foreclosure sale is not supported by a valid Notice of Default."

At trial, Lewin sought to introduce his own testimony that "there is a clear gap in title between World Savings, the original Beneficiary, and MTGLO Investors, the entity from which defendants herein claim to derive their rights. I spent several hours performing a search of the Grantor/Grantee index at the County Recorder's office and could find no document in the chain of title to the subject property that connected, or bridged the gap, between World Savings and MTGLO."

Defendants objected to this as irrelevant. Lewin argued that there had to be a "connection," meaning an assignment (or a chain of assignments), between World Savings and Goldman. The trial court sustained the objection. It ruled: "Mr. Lewin, the fact that you couldn't find anything in the County Recorder's office . . . does not meet your burden of proving that Goldman and Ocwen and now Quality are not the proper parties at this time."

B. *Discussion.*

Lewin argues that the proffered evidence was relevant to his cause of action to enjoin the trustee's sale. He relies on Civil Code section 2934a, which, as relevant here, provides: "The trustee under a trust deed upon real property . . . may be substituted by the recording . . . of a substitution executed and acknowledged by . . . all of the beneficiaries under the trust deed, or their successors in interest . . . ." (Civ. Code, § 2934a, subd. (a).)

"Rulings regarding relevancy . . . 'are reviewed under an abuse of discretion standard.' [Citation.]" (*Donlen v. Ford Motor Company* (2013) 217 Cal.App.4th 138, 147.)

Here, Lewin's own complaint alleged that Goldman was the duly authorized beneficiary. This was a conclusive and binding judicial admission. (*Vita Planning and Landscape Architecture, Inc. v. HKS Architects, Inc.* (2015) 240 Cal.App.4th 763, 772-773.) Even assuming that Goldman had not properly substituted Quality as trustee (although Lewin did not make any offer of proof as to this), it could do so by executing

and recording the necessary document at any time. Thus, that fact would not entitle Lewin to an injunction against a future trustee's sale.

We also note that there was no evidence that Goldman was, in fact, claiming as assignee of MTGLO. Precisely because Lewin had conceded that Goldman was the duly authorized beneficiary, Goldman had had no reason to introduce any evidence of its chain of title. The trial court could reasonably conclude that, in the absence of evidence regarding MTGLO, evidence that there was no recorded assignment from MTGLO to Goldman was irrelevant.

Finally, Lewin had already contradicted the proffered testimony. He had testified, without any objection, "World is the beneficiary here. . . . To my understanding, it was assigned to Washington Mutual. From Washington Mutual, it was assigned to Wells Fargo. From Wells Fargo, it was assigned to Goldman . . . ." Thus, even assuming the proffered evidence was marginally relevant, the trial court (which was also the trier of fact) could reasonably conclude that it had zero credibility and therefore it could not possibly affect the outcome.

For these reasons, we conclude that the trial court did not err by excluding the proffered testimony.

V

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal against Lewin.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.